

Foster, Denise

Subject: FW: Comments on Suggested GR12.1

From: Domingo Sanchez [<mailto:metamoros66@gmail.com>]

Sent: Sunday, February 03, 2013 3:21 AM

To: Foster, Denise

Subject: Re: Comments on Suggested GR12.1

[CORRECTED COPY.... the word "amount" in the second to last paragraph should be changed to "amounts".]

This is my response to the request for comments concerning the amendment to GR12.1 "suggested by the WSBA".

1. I concur with other commenters who have stated that this is an obvious attempt by WSBA management to retaliate against the membership for holding a referendum concerning license fees.
2. WSBA management is requesting the Court to create a method for the overturning of decisions made by the WSBA. If WSBA management wants to act in bad faith with respect to WSBA members, the Court should seek to prevent such action, not facilitate it.
3. The WSBA management statement contains no explanation for what the change is attempting to accomplish, what circumstances created the need at this time, or what improvements the change will yield. It is possible to perceive something sinister in this brevity i.e. that the real reasons for the suggested change are being discussed behind close doors, in private communications between the Court and WSBA management. This perception is likely false, and I trust that it is. However, the Supreme Court should guard against creating the impression that its rule-making lacks transparency, or that there are back-channels of communication into the Court.
4. Assuming that the Rule is used by WSBA management to attack the results of a WSBA membership referendum, awkward circumstances would prevail:

First, management would be seeking to overturn the official position of the WSBA, as determined by a membership vote, pursuant to the State Bar Act. Such an attempt would be ultra vires, and the Court would bump up directly against the Statute and the legislature.

Second, since the rights of WSBA members would be impacted by a Supreme Court "review", such a review could not be ex parte. The Supreme Court would have to provide notice to all parties and an opportunity to be heard. In addition, since factual determinations would need to be made, the Supreme Court would need to hold a trial. At the trial, reasonable alternatives to increasing fees would have to be considered, for example, cutting unnecessary expenses or non-essential programs.

Third, if the Court were to merely "set" fees on an ex parte basis, it would be acting in an administrative capacity, for which some provision for judicial review would have to be made. Since the members of the Court made the initial decision, they could not also participate in the review. The Court would need to recuse itself in favor of a pro tem panel.

Fourth, the direct "setting" of fees by the Court amounts to a direct attack upon the exclusive power of the legislature to determine taxes and appropriations. Moreover, the WSBA is reduced to mere shell for the holding of public funds which are, according to the Constitution, supposed to be deposited into the state treasury. It is

only the State Bar Act which permits the WSBA to hold funds apart from the state treasury. If that act, with its referendum procedures, are held to be void, then the legal basis for holding funds in a private bank account will also disappear.

Thank you for your kind attention to these comments.

Sincerely

Domingo Sanchez